FILED
UNITED STATES DISTRICT COURT
LAS CRUCES, NEW MEXICO

MAY 30 2017 @ 11:35 AM

MATTHEW J. DYKMAN
CLERK

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JESSE DENVER HANES,

Defendant.

Cr. No. 16-cr-3463-RB

PLEA AGREEMENT

Pursuant to Rule 11(c)(1)(C), Fed. R. Crim. P., the parties notify the Court of the following agreement between the United States Attorney for the District of New Mexico, the defendant, JESSE DENVER HANES, and the defendant's counsel, MARIO ESPARZA:

REPRESENTATION BY COUNSEL

1. The defendant understands the defendant's right to be represented by an attorney and is so represented. The defendant has thoroughly reviewed all aspects of this case with the defendant's attorney and is fully satisfied with that attorney's legal representation.

RIGHTS OF THE DEFENDANT

2. The defendant further understands the defendant's rights:

a. to plead not guilty, or having already so pleaded, to persist in that plea;

b. to have a trial by jury; and

c. at a trial:

1) to confront and cross-examine adverse witnesses,

2) to be protected from compelled self-incrimination,

3) to testify and present evidence on the defendant's own behalf, and

4) to compel the attendance of witnesses for the defense.

WAIVER OF RIGHTS AND PLEA OF GUILTY

3. Defendant hereby agrees to waive these rights and to plead guilty to the Superseding Indictment, which charges the following violations: Count 1: 18 U.S.C. § 2119(1): Attempted Carjacking; Count 2: 18 U.S.C. § 924(c)(1)(A)(ii): Using, Carrying, and Brandishing a Firearm During and in Relation to a Crime of Violence, and Possessing and Brandishing a Firearm in Furtherance of Such Crime; Count 3: 18 U.S.C. § 2119(2): Carjacking Resulting in Serious Bodily Injury; Count 4: 18 U.S.C. §§ 924(c)(1)(A)(iii), (c)(1)(C)(i): Using, Carrying, and Discharging a Firearm During and in Relation to a Crime of Violence, and Possessing and Discharging a Firearm in Furtherance of Such Crime; and Count 5: 18 U.S.C. §§ 922(g)(1) and 924(a)(2): Felon in Possession of a Firearm and Ammunition.

ELEMENTS OF THE OFFENSES CHARGED

4. The defendant understands that by signing this plea agreement, he is acknowledging that he understands the elements of each offense charged, and he agrees that the government could prove each of the elements beyond a reasonable doubt at trial.

5. Count 1: 18 U.S.C. § 2119(1): In order to find the defendant guilty of attempted carjacking, the government must prove the following beyond a reasonable doubt:

1) The defendant attempted to take a motor vehicle from the presence of another;

2) The motor vehicle had previously crossed state lines;

3) The defendant attempted to take the motor vehicle by the use of force, violence, or intimidation.

6. Count 2: 18 U.S.C. § 924(c)(1)(A)(ii): In order to find the defendant guilty of using, carrying, and brandishing a firearm during and in relation to a crime of violence, and possessing and brandishing a firearm in furtherance of such crime, the government must prove the following beyond a reasonable doubt:

1) The defendant committed the crime of attempted carjacking, as charged in Count 1 of the superseding indictment;

2) The defendant used, carried or possessed the firearm and brandished it;

3) The defendant brandished the firearm during and in relation to the attempted carjacking.

7. Count 3: 18 U.S.C. § 2119(2): In order to find the defendant guilty of carjacking resulting in serious bodily injury, the government must prove the following beyond a reasonable doubt:

1) The defendant took a motor vehicle from the presence of another;

2) While taking the motor vehicle, the defendant intended to cause serious bodily injury to the victim;

3) The motor vehicle had previously crossed state lines;

4) The defendant took the motor vehicle by the use of force, violence, or intimidation.

8. Count 4: 18 U.S.C. §§ 924(c)(1)(A)(iii), (c)(1)(C)(i): In order to find the defendant guilty of using, carrying, and discharging a firearm during and in relation to a crime of violence, and possessing and discharging a firearm in furtherance of such crime, the government must prove beyond a reasonable doubt:

1) The defendant committed the crime of carjacking, as charged in Count 3 of the superseding indictment;

2) The defendant discharged a firearm;

3) The defendant discharged the firearm during and in relation to the carjacking.

9. Count 5: 18 U.S.C. §§ 922(g)(1) and 924(a)(2): In order to find the defendant guilty of being a felon in possession of a firearm and ammunition, the government must prove beyond a reasonable doubt:

1) The defendant knowingly possessed a firearm and ammunition;

2) The defendant was convicted of a felony, that, a crime punishable by imprisonment for a term exceeding one year, before he possessed the firearm and ammunition;

3) Before the defendant possessed the firearm and ammunition, the firearm and ammunition had moved at some time from one state to another.

SENTENCING

10. The defendant understands that the minimum and maximum penalty the Court can impose as to Count 1 is:

a. imprisonment for a period of up to fifteen years' imprisonment;

b. a fine not to exceed $250,000;

c. a term of supervised release of up to three years to follow any term of imprisonment. (If the defendant serves a term of imprisonment, is then released on supervised release, and violates the conditions of supervised release, the defendant's supervised release could be revoked — even on the last day of the term — and the defendant could then be returned to another period of incarceration and a new term of supervised release.);

d. a mandatory special penalty assessment of $100.00; and

e. restitution as may be ordered by the Court.

11. The defendant understands that the minimum and maximum penalty the Court can impose as to Count 2 is:

a. mandatory seven years imprisonment and up to life which must be run consecutive to any other sentence imposed;

b. a fine not to exceed $250,000;

c. a term of supervised release of up to three years to follow any term of imprisonment. (If the defendant serves a term of imprisonment, is then released on supervised release, and violates the conditions of supervised release, the defendant's supervised release could be revoked — even on the last day of the term — and the defendant could then be returned to another period of incarceration and a new term of supervised release.);

d. a mandatory special penalty assessment of $100.00; and

e. restitution as may be ordered by the Court.

12. The defendant understands that the minimum and maximum penalty the Court can impose as to Count 3 is:

a. imprisonment for a period of up to twenty-five years;

b. a fine not to exceed $250,000;

c. a term of supervised release up to five years to follow any term of imprisonment. (If the defendant serves a term of imprisonment, is then released on supervised release, and violates the conditions of supervised release, the defendant's supervised release could be revoked — even on the last day of the term — and the defendant could then be returned to another period of incarceration and a new term of supervised release.);

d. a mandatory special penalty assessment of $100.00; and

e. restitution as may be ordered by the Court.

13. The defendant understands that the minimum and maximum penalty the Court can impose as to Count 4 is:

a. mandatory twenty-five years' imprisonment and up to life which must be run consecutive to any other sentence imposed;

b. a fine not to exceed $250,000;

c. a term of supervised release up to five years to follow any term of imprisonment. (If the defendant serves a term of imprisonment, is then released on supervised release, and violates the conditions of supervised release, the defendant's supervised release could be revoked — even on the last day of the term — and the defendant could then be returned to another period of incarceration and a new term of supervised release.);

d. a mandatory special penalty assessment of $100.00; and

e. restitution as may be ordered by the Court.

14. The defendant understands that the minimum and maximum penalty the Court can impose as to Count 5 is:

a. imprisonment for a period of up to ten years;

b. a fine not to exceed $250,000;

c. a term of supervised release of up to three years to follow any term of imprisonment. (If the defendant serves a term of imprisonment, is then released on supervised release, and violates the conditions of supervised release, the defendant's supervised release could be revoked — even on the last day of the term — and the defendant could then be returned to another period of incarceration and a new term of supervised release.);

d. a mandatory special penalty assessment of $100.00; and

15. The parties recognize that the federal sentencing guidelines are advisory, and that the Court is required to consider them in determining the sentence it imposes.

16. The parties are aware that the Court will decide whether to accept or reject this plea agreement. The Court may defer its decision as to acceptance or rejection until there has been an opportunity to consider the presentence report. Pursuant to Federal Rule of Criminal Procedure 11(c)(5), if the Court rejects this plea agreement, the defendant shall have the right to withdraw

the defendant's plea of guilty.

17. Regardless of any other provision in this agreement, the United States reserves the right to provide to the United States Pretrial Services and Probation Office and to the Court any information the United States believes may be helpful to the Court, including but not limited to information about the recommendations contained in this agreement and any relevant conduct under U.S.S.G. § 1B1.3.

DEFENDANT'S ADMISSION OF FACTS

18. By my signature on this plea agreement, I am acknowledging that I am pleading guilty because I am, in fact, guilty of the offenses to which I am pleading guilty. I recognize and accept responsibility for my criminal conduct. Moreover, in pleading guilty, I acknowledge that if I chose to go to trial instead of entering this plea, the United States could prove facts sufficient to establish my guilt of the offenses to which I am pleading guilty beyond a reasonable doubt, including any facts alleged in the indictment that increase the statutory minimum or maximum penalties. I specifically admit the following facts related to the charges against me, and declare under penalty of perjury that all of these facts are true and correct:

Counts 1 & 2:

On or about August 12, 2016, in Doña Ana County, District of New Mexico, I, Jesse Denver Hanes, attempted to carjack two individuals—who are identified as Victim 1 and Victim 2 in the Superseding Indictment—at a rest stop near Radium Springs, New Mexico. I had a firearm at the time this occurred. I approached Victim 1 and demanded that he/she give me his/her car keys. Victim 1 refused to give me his/her car keys so I then approached Victim 2 and brandished the firearm I was holding and again demanded the car keys. Victim 1 and Victim 2 were driving a Budget rental truck at the time. When I attempted to take the vehicle from Victim 1 and Victim 2, I used the threat of force, violence, and intimidation by both my actions and by showing the firearm. I acknowledge that the Budget rental truck that Victim 1 and Victim 2 were driving had recently crossed state lines because

Victim 1 and Victim 2 were driving from Minnesota to Arizona, and, accordingly, the vehicle had been transported in interstate commerce.

Counts 3 & 4:

On or about August 12, 2016, in Doña Ana County, District of New Mexico, I, Jesse Denver Hanes, did carjack an individual—who is identified as Victim 3 in the Superseding Indictment—at a rest stop near Radium Springs, New Mexico. I had a firearm at the time this occurred. I approached Victim 3 and demanded that he/she give me his/her car keys. Victim 3 immediately gave me his/her car keys and I demanded that Victim 3 get into the car with me. Victim 3 refused and I shot him/her in the leg area. Victim 3 was driving a red 2015 Chevrolet Cruze, bearing a Nevada license plate, which had been rented from HERTZ Vehicles LLC. When I took the vehicle from Victim 3, I used the threat of force, violence, and intimidation by both my actions and use of the firearm. I acknowledge that the HERTZ rental car that Victim 3 was driving crossed state lines from Nevada to be present in New Mexico. I also acknowledge that Victim 3 was planning on driving the rental car from New Mexico into Texas. Accordingly, I recognize that there is a sufficient interstate nexus element for Count 3 of the Superseding Indictment because that vehicle had been transported in interstate commerce.

Count 5:

On or about August 12, 2016, in Doña Ana County, District of New Mexico, I, Jesse Denver Hanes, was in possession of a .45 caliber Kimber handgun bearing serial #KU265807 and sixteen (16) rounds of .45 caliber ammunition. At the time I was in possession of the firearm and ammunition, I had been previously convicted of felony Robbery in Ohio state court. I received a three-year sentence for that conviction. I also acknowledge that I had traveled from Arizona into New Mexico and I had the firearm and bullets with me at the time I crossed from Arizona into New Mexico. Accordingly, the firearm and ammunition listed in Count 5 of the Superseding Indictment traveled in interstate commerce.

19. By signing this agreement, the defendant admits that there is a factual basis for each element of the crime(s) to which the defendant is pleading guilty. The defendant agrees that the Court may rely on any of these facts, as well as facts in the presentence report, to determine the defendant's sentence, including, but not limited to, the advisory guideline offense level.

STIPULATIONS

20. The United States and the defendant stipulate as follows:

a. The defendant and the United States have made an agreement pursuant to Federal Rule of Criminal Procedure 11(c)(1)(C), that a sentence of life imprisonment without the possibility of release is the appropriate sentence in this case. The judge shall order that the defendant's sentence run concurrent to the sentence he receives in his New Mexico state case, D-307-CR-20160891.

DEFENDANT'S ADDITIONAL AGREEMENT

21. The defendant understands the defendant's obligation to provide the United States Pretrial Services and Probation Office with truthful, accurate, and complete information. The defendant represents that the Defendant has complied with and will continue to comply with this obligation.

22. Except under circumstances where the Court, acting on its own, rejects this plea agreement, the defendant agrees that, upon the defendant's signing of this plea agreement, the facts that the defendant has admitted under this plea agreement as set forth above, as well as any facts to which the defendant admits in open court at the defendant's plea hearing, shall be admissible against the defendant under Federal Rule of Evidence 801(d)(2)(A) in any subsequent proceeding, including a criminal trial, and the defendant expressly waives the defendant's rights under Federal Rule of Criminal Procedure 11(f) and Federal Rule of Evidence 410 with regard to the facts the defendant admits in conjunction with this plea agreement.

RESTITUTION

23. The parties agree that, as part of the Defendant's sentence, the Court will enter an

order of restitution pursuant to the Mandatory Victim's Restitution Act, 18 U.S.C. § 3663A.

24. The defendant understands that an unanticipated amount of a restitution order will not serve as grounds to withdraw defendant's guilty plea. The defendant further agrees to comply with any restitution order entered into at the time of sentencing. The defendant further agrees that the defendant will not seek the discharge of any restitution obligation, in whole or in part, in any present or future bankruptcy proceeding. The defendant agrees to make full restitution for the provable losses caused by the defendant's activities. The defendant further agrees to grant the United States a wage assignment, liquidate assets, or complete any other tasks which will result in immediate payment in full, or payment in the shortest time in which full payment can be reasonably made as required under 18 U.S.C. § 3572(d).

25. The defendant further agrees to make full and accurate disclosure of his financial affairs to the United States. Specifically, the defendant agrees that, before sentencing, the defendant shall provide to the United States, under penalty of perjury, a financial statement which shall identify all assets owned or held directly or indirectly by the defendant. The defendant shall also identify all assets valued at more than $5,000 which have been transferred to third parties since August 12, 2016, including the location of the assets and the identity of any third party.

26. The defendant further agrees that whatever monetary penalties are imposed by the Court will be due immediately and will be subject to immediate enforcement by the United States as provided for in 18 U.S.C. § 3613. If the Court imposes a schedule of payments, the defendant understands that the schedule of payments is merely a minimum schedule of payments and not the only method, nor a limitation on the methods, available to the United States to

enforce the judgment. If the defendant is incarcerated, the defendant agrees to participate in the Bureau of Prisons' Inmate Financial Responsibility Program, regardless of whether the Court specifically directs participation or imposes a schedule of payments.

FORFEITURE

27. The defendant voluntarily and immediately agrees to the administrative, civil, or criminal forfeiture to the United States all of the defendant's right, title, and interest in the following assets and properties:

a. a .45 caliber Kimber handgun bearing serial #KU265807;
b. sixteen (16) rounds of .45 caliber ammunition
c. any other seized evidence that is or was an instrumentality of a violation of 18 U.S.C. § 2119 or 18 U.S.C. § 922(g).

28. The defendant agrees to fully assist the United States in the forfeiture of the above-described property and to take whatever steps are necessary to pass clear title to the United States, including but not limited to execution of any documents necessary to transfer the Defendant's interest in the above-described property to the United States.

29. The defendant agrees to waive the right to notice of any forfeiture proceeding involving the above-described property.

30. The defendant knowingly and voluntarily waives the right to a jury trial on the forfeiture of the above-described property. The defendant knowingly and voluntarily waives all constitutional, legal, and equitable defenses to the forfeiture of said property in any proceeding. The defendant agrees to waive any jeopardy defense or claim of double jeopardy, whether constitutional or statutory, and agrees to waive any claim or defense under the Eighth Amendment to the United States Constitution, including any claim of excessive fine, to the forfeiture of said property by the United States or any State or its subdivisions.

WAIVER OF APPEAL RIGHTS

31. The defendant is aware that 28 U.S.C. § 1291 and 18 U.S.C. § 3742 afford a defendant the right to appeal a conviction and the sentence imposed. Acknowledging that, the defendant knowingly waives the right to appeal the defendant's conviction(s) and any sentence, including any fine, imposed in conformity with this Fed. R. Crim. P. 11(c)(1)(C) plea agreement, as well as any order of restitution entered by the Court. In addition, the defendant agrees to waive any collateral attack to the defendant's conviction(s) and any sentence, including any fine, pursuant to 28 U.S.C. §§ 2241 or 2255, or any other extraordinary writ, except on the issue of defense counsel's ineffective assistance.

GOVERNMENT'S ADDITIONAL AGREEMENT

32. Provided that the defendant fulfills the defendant's obligations as set out above, the United States agrees that:

a. The United States will not bring additional criminal charges against the defendant arising out of the facts forming the basis of the present Indictment.

33. This agreement is limited to the United States Attorney's Office for the District of New Mexico and does not bind any other federal, state, or local agencies or prosecuting authorities.

VOLUNTARY PLEA

34. The defendant agrees and represents that this plea of guilty is freely and voluntarily made and is not the result of force, threats, or promises (other than the promises set forth in this agreement and any addenda). The defendant also represents that the defendant is pleading guilty because the defendant is in fact guilty.

VIOLATION OF PLEA AGREEMENT

35. The defendant agrees that if the defendant violates any provision of this agreement, the United States may declare this agreement null and void, and the defendant will thereafter be subject to prosecution for any criminal violation, including but not limited to any crimes or offenses contained in or related to the charges in this case, as well as perjury, false statement, obstruction of justice, and any other crime committed by the defendant during this prosecution.

SPECIAL ASSESSMENT

36. At the time of sentencing, the defendant will tender to the United States District Court, District of New Mexico, 333 Lomas Blvd. NW, Suite 270, Albuquerque, New Mexico 87102, a money order or certified check payable to the order of the United States District Court in the amount of $500 in payment of the special penalty assessment described above.

ENTIRETY OF AGREEMENT

37. This document and any addenda are a complete statement of the agreement in this case and may not be altered unless done so in writing and signed by all parties. The parties agree and stipulate that this agreement will be considered part of the record of defendant's guilty plea hearing as if the entire agreement had been read into the record of the proceeding. This agreement is effective upon signature by the defendant and an Assistant United States Attorney, and upon entry of a guilty plea by the defendant pursuant to this agreement.

AGREED TO AND SIGNED this 30 day of May, 2017.

JAMES D. TIERNEY
Acting United States Attorney

MARISA A. ONG
AARON JORDAN
Assistant United States Attorneys
200 N. Church St.
Las Cruces, New Mexico 88001
(575) 323-2391

I have carefully discussed every part of this agreement with my client. Further, I have fully advised my client of my client's rights, of possible defenses, of the sentencing factors set forth in 18 U.S.C. § 3553(a), of the relevant Sentencing Guidelines provisions, and of the consequences of entering into this agreement. To my knowledge, my client's decision to enter into this agreement is an informed and voluntary one.

Co Counsel

MARIO ESPARZA
Attorney for the Defendant

I have carefully discussed every part of this agreement with my attorney. I understand the terms of this agreement, and I voluntarily agree to those terms. My attorney has advised me of my rights, of possible defenses, of the sentencing factors set forth in 18 U.S.C. § 3553(a), of the relevant Sentencing Guidelines provisions, and of the consequences of entering into this agreement.

JESSE DENVER HANES
Defendant